

MARK FANG, ATTORNEY AT LAW, APC
Mark Fang, Esq.; SBN 199073
William G. Short, Esq.; SBN 132479
215 East Daily Dr., Suite 9
Camarillo, CA 93010
Telephone: (805) 383-2788
Facsimile: (805) 388-9488

Attorney for Plaintiff EVERFLOW
TECHNOLOGY CORPORATION

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

EVERFLOW TECHNOLOGY
CORPORATION, incorporated under the
laws of the Republic of China (Taiwan),

Plaintiff,

vs.

MILLENNIUM ELECTRONICS, INC., a
California corporation,

Defendant.

Case No.: C07-05795 JF (HRLx)

**PLAINTIFF'S OBJECTIONS TO
EVIDENCE**

Date: February 8, 2008

Time: 9:00 a.m.

Judge: Hon. Jeremy Fogel

Plaintiff hereby objects to the following evidence presented by the Defendant in
connection with the Plaintiff's application for order of writ of attachment set for hearing on
February 8, 2008 before this court:

1. DECLARATION OF JAMES LORO IN OPPOSITION TO PLAINTIFF'S
APPLICATION FOR ORDER OF WRIT OF ATTACHMENT, dated January 18, 2008, page
1, line 22 thru page 2, line 5.

1 **Lack of Foundation.** Fed. R. Evid. § 602. Personal knowledge and competency
 2 must be shown by the facts stated: *i.e.*, they must be matters known to the declarant
 3 personally, as distinguished from matters of opinion or hearsay. *Bank Melli Iran v. Pahlavi*
 4 (9th Cir. 1995) 58 F.3d 1406, 1412. See also, *Norita v. Commonwealth of the N. Mariana*
 5 *Islands* (9th Cir. 2001) 331 F.3d 690, 697-698 (affidavits submitted in opposition to motion
 6 for summary judgment were insufficient to raise genuine issue of material fact when they
 7 did not recite how affiants gained information they allege, because trial court could not
 8 determine whether they were made on personal knowledge or whether information they
 9 contained was subject to hearsay objection). It is Mr. Loro's burden to establish his own
 10 personal knowledge. *Ward v. First Fed. Sav. Bank* (7th Cir. 1999) 173 F.3d 611, 617-618
 11 (general affidavit not specifying source of awareness, held not to establish affiant's
 12 personal knowledge). Here, Mr. Loro has wholly failed to meet his burden of establishing
 13 personal knowledge. Mr. Loro does not tell us, other than that he is President, how he has
 14 gained personal knowledge about the details within his Declaration.

15 2. DECLARATION OF JAMES LORO IN OPPOSITION TO PLAINTIFF'S
 16 APPLICATION FOR ORDER OF WRIT OF ATTACHMENT, dated January 18, 2008, page
 17 2, lines 6 thru 8.

18 **Lack of Foundation.** Fed. R. Evid. § 602. Personal knowledge and competency
 19 must be shown by the facts stated: *i.e.*, they must be matters known to the declarant
 20 personally, as distinguished from matters of opinion or hearsay. *Bank Melli Iran v. Pahlavi*
 21 (9th Cir. 1995) 58 F.3d 1406, 1412. See also, *Norita v. Commonwealth of the N. Mariana*
 22 *Islands* (9th Cir. 2001) 331 F.3d 690, 697-698 (affidavits submitted in opposition to motion
 23 for summary judgment were insufficient to raise genuine issue of material fact when they
 24 did not recite how affiants gained information they allege, because trial court could not
 25 determine whether they were made on personal knowledge or whether information they
 26 contained was subject to hearsay objection). It is Mr. Loro's burden to establish his own
 27 personal knowledge. *Ward v. First Fed. Sav. Bank* (7th Cir. 1999) 173 F.3d 611, 617-618
 28 (general affidavit not specifying source of awareness, held not to establish affiant's

1 personal knowledge). Here, Mr. Loro has wholly failed to meet his burden of establishing
2 personal knowledge. Mr. Loro does not tell us, other than that he is President, how he has
3 gained personal knowledge about the details within his Declaration.

4 **Hearsay.** Fed. R. Evid. § 801. Clearly verbalized communications with which the
5 declarant intends to convey information are "statements" within the meaning of Rule 801
6 (a). *Superior Fireplace Co. v. Majestic Prods Co.* (Fed. Cir. 2001) 270 F.3d 1358, 1365-
7 1366. Mr. Loro's attachment ("Exhibit A") is a clearly verbalized communication by which
8 he intends to convey information, which is offered to prove the truth of the matter asserted,
9 and is therefore classic hearsay.

10 The business records exception, however, does not apply (Fed. R. Evid. § 803). Mr.
11 Loro has failed to prove, or even assert, whether the document has been: 1) kept in the
12 course of a regularly conducted business activity, 2) made at or near the time of the matter
13 recorded in it, 3) made by a person with knowledge, and 4) produced as a regular practice
14 of that business activity. A showing of all four elements is necessary for the exception to
15 apply.

16 **Lack of Authentication.** Fed. R. Evid. § 901. The defendant has failed to meet its
17 burden of introducing evidence sufficient to show that the exhibit is what the Mr. Loro
18 claims it to be. *U.S. v. Inserra* (2d Cir. 1994) 34 F.3d 83, 90. Here, Mr. Loro provides no
19 evidence describing how the document was created, where it came from, who created it,
20 what it purports to show, or even what it is.

21 Plaintiff will respectfully request the court at the hearing on the Application to sustain
22 the above objections and to strike the evidence referred to above.

23
24 Dated: January 24, 2008

MARK FANG ATTORNEY AT LAW, APC

25
26
27 By: 

28 Mark Fang, Esq., Attorney for Plaintiff Everflow
Technology Corporation

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF VENTURA

I, the undersigned, declare that I am a resident of the County of Ventura, State of California; I am over the age of 18 years and not a party to the within action; my business address is 215 E. Daily Drive, Suite 9, Camarillo, California 93010.

On **January 25, 2008**, I served the following document, **PLAINTIFF'S OBJECTIONS TO EVIDENCE**, of which the original document, or a true and correct copy, is attached, by placing a copy thereof in a separate envelope for each addressee named hereafter, addressed to each such address respectively as follows:

Mark R. Figueiredo, Esq.
Jonathan H. Van Ee, Esq.
STRUCTURE LAW GROUP, LLP
1754 Technology Dr, Suite 135
San Jose, CA 95110
(408) 441-7500
(408)228-8787
mrf@structurelaw.com
jve@structurelaw.com

☒ **(BY MAIL)** I deposited such envelope in the mail at Camarillo, California. The envelope was mailed with postage thereon fully prepaid. Executed on **January 25, 2008**.

☐ **(BY FACSIMILE)** In addition to regular mail, I sent this documents via facsimile to the above listed numbers.

☐ **(BY PERSONAL SERVICE)** Such envelope was delivered by HAND DELIVERY to the office of the addressee. Executed on _____.

☐ **(VIA CERTIFIED MAIL, RETURN RECEIPT)** Such envelope was delivered via certified mail, return receipt to all addressees listed on attached mailing list. Executed _____.

☐ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☒ **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

I declare that I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

January 25, 2008, at Camarillo, California.

Sarah McEachern
(Print Name)


(Signature)